

Remarks/Arguments:

Claims 33-59 are pending and rejected in the application. Claims 33, 42, 47 and 51 have been amended. No new matter has been added.

On page 2, the Official Action rejects claims 42-58 under 35 U.S.C. § 101 because they are directed to non-statutory subject matter. Thus, Applicants have amended claims 42 and 51 to replace the word "unit" with statutory subject matter such as "receivers" and "transmitters." Withdrawal of the § 101 rejections are respectfully requested.

On page 3, the Official Action rejects claims 33, 35-36, 38-42, 44-45, 47-51 and 53-55 under 35 U.S.C. § 102(e) as being anticipated by O'Toole (US 7,673,048). It is respectfully submitted, however, that the claims are patentable over the art of record for at least the reasons set forth below.

Applicants' claim 42 includes features which are different than the art of record, namely:

... wherein the sustain data received by the data processing apparatus indicates a connection time for the tunnel communication between the data processing apparatus and the other data processing apparatus exclusive of the access apparatus.

Claim 42 relates to a sustain data which indicates a connection time between at least two data processing apparatuses. Specifically, the data processing apparatuses perform tunnel communication exclusive of an access apparatus (an access apparatus relaying data between the two data processing apparatuses is not required). Support for this feature can be at least found on pages 9 and 25 of Applicants' specification and furthermore shown in Fig. 21. No new matter has been added.

On page 3, the Official Action cites Fig. 1 of O'Toole where a tunnel connection is established between a client device 30 and a destination device 36-M through gateway device 34-1 (access device). Thus, the Examiner is interpreting O'Toole's client device 30 and destination device 36-M as Applicants' claimed data processing

apparatuses (recited in Applicants' claim 42). The Examiner is also interpreting O'Toole's gateway 34-1 as the access device (recited in Applicants' claim 42). O'Toole's gateway device (access device), however, is required in order to perform tunnel communication between the client device and the destination device (the client device and destination device do not have a direct tunnel connection between each other exclusive of the gateway). The gateway is required to maintain the tunnel and relay the data.

Applicants' claim 1 is different than the art of record because sustain data indicates a connection time of tunnel communication between two data processing apparatuses exclusive of the access apparatus ("*... wherein the sustain data received by the data processing apparatus indicates a connection time for the tunnel communication between the data processing apparatus and the other data processing apparatus exclusive of the access apparatus*").

As shown in Applicants' Fig. 21, a first data processing apparatus 1 and a second data processing apparatus 2 obtain sustain data from access apparatus 7. Thereafter, first data processing apparatus 1 and second data processing apparatus 2 perform tunnel communication with each other exclusive of the access apparatus 7 (the access apparatus 7 is not required for the first data processing apparatus 1 and the second data processing apparatus 2 to perform tunnel communication). For example, access apparatus 7 is not located in between (and relaying data between) the data processing apparatuses, whereas O'Toole's gateway is in between the client device and the destination device. Accordingly, for the reasons set forth above, claim 42 is patentable over the art of record.

Independent claims 33 and 51 include similar features to claim 42. Thus, independent claims 33 and 51 are also patentable over the art of record for at least the reasons set forth above.

Dependent claims 35-36, 38-41, 44-45, 47-50 and 53-55 include all of the features of the claims from which they depend. Thus, these claims are also patentable over the art of record for at least the reasons set forth above.

On page 8, the Official Action rejects claims 34, 37, 43, 46, 52 and 56-59

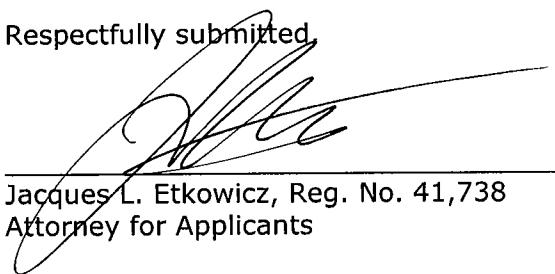
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under 35 U.S.C. § 103(a) as being unpatentable over O'Toole and further in view of King (US 2002/0194292). King is relied upon for using sustain data to judge whether to cancel tunnel communication. King, however, does not make up for the deficiencies of O'Toole. Thus, dependent claims 34, 37, 43, 46, 52 and 56-59 are also patentable over the art of record for at least the reasons set forth above.

In view of the amendments and arguments set forth above, the above-identified application is in condition for allowance which action is respectfully requested.

Respectfully submitted,


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